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Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Fifty-seventh year

Identical letters dated 4 March 2002 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

You will remember that, in my letter dated 14 September 2001 (A/56/265-S/2001/764 and Corr.1), I drew to your attention and to the attention of the members of the General Assembly and of the Security Council a letter, dated 9 July 2001, from the President of the International Tribunal for Rwanda, Judge Navanethem Pillay (ibid., annex).

In the report that was attached to her letter, President Pillay made certain projections, in the light of information supplied by the Prosecutor, of how the activities of the International Tribunal for Rwanda were likely to evolve in terms of the conduct of trials. She concluded that, if the Tribunal were to maintain its current structure, it would need a considerable period of time to complete the trials of all those whom it could be anticipated might be prosecuted before it. To address that situation, President Pillay and her colleagues on the bench of the International Tribunal for Rwanda proposed that the judicial capacity of the Tribunal should be enhanced through the establishment of a pool of ad litem judges.

By a letter dated 6 February 2002 (see annex), President Pillay has informed me that the Prosecutor has recently provided her with revised information regarding her investigations programme. I am attaching President Pillay's letter for your consideration and for the consideration of the members of the General Assembly and of the Security Council.

In her letter, President Pillay reports that the Prosecutor has advised her that, following a further review of her investigations programme, she has significantly

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reduced the number of new accused whom she envisages that she might possibly prosecute before the International Tribunal for Rwanda.

President Pillay notes that certain changes accordingly need to be made in the projections of the Tribunal's future trial activities that were contained in the report attached to her letter of 9 July 2001. Corresponding changes also need to be made in the summary that was attached to that report. An amended summary incorporating those changes is attached to President Pillay's letter.

I would be grateful if you would bring the present letter and its attachments to the attention of the members of the General Assembly and of the Security Council.

(*Signed*) Kofi A. **Annan**

Annex

Letter dated 6 February 2002 from the President of the International Tribunal for Rwanda addressed to the Secretary-General

Reference is made to our proposal for the creation of a pool of ad litem judges, submitted to you on 9 July 2001 (A/56/265-S/2001/764, annex, appendix), which is currently under consideration by the Security Council.

We are concerned that the delay occasioned in reaching a decision on our proposal is causing a setback to our trial schedule for this year. I have held discussions with the Prosecutor, Carla Del Ponte, on the concerns raised by the Security Council with regard to her future investigative programme and urged that the programme be revised. The Prosecutor subsequently, in a letter dated 31 January 2002, submitted an outline of her revised prosecution strategy. In this regard, I note the following:

(a) The Prosecutor has submitted a proposal to amend the Tribunal's Rules of Procedure and Evidence to provide for suspects and accused to be transferred for trial to national jurisdictions. Such transfers will relieve the caseload of the Tribunal and expedite the completion of its mandate. I will table this proposal at the next plenary;

(b) The Prosecutor has indicated that no new investigations will be undertaken by her office after the year 2003, and all investigations will be terminated by the year 2004;

(c) The Prosecutor has reduced the number of suspects/accused under investigation from the original number of 136 to 111.

The Prosecutor has stressed that, in relation to the revised number of new investigations (111), the same qualifications apply as in relation to her previous number (136). In particular, she states that there may not be sufficient evidence to support indictments "in a significant number of cases" and that not every indicted person will be arrested. Consequently, it is my understanding that the actual number of new accused will be significantly lower than 111, but that the Prosecutor is unable to give further clarifications at this juncture.

Taking the figure of 111 as a point of departure, it should be recalled that in paragraph 15 of the request (paras. 25-27 of the attachment containing supporting statistics), it was stated that the Prosecutor's original estimate of 136 new accused and approximately 45 new trials would involve 10 new trials every year up to 2005. Using the same average figure of three accused per trial as in the request, 111 new accused would require approximately 37 new trials, a reduction of 8 trials.

Paragraph 31 of the attachment contained three possible rates for successful arrests of new accused (100, 75 and 50 per cent). As mentioned above, an arrest rate of 100 per cent is quite unlikely. The Prosecutor's new estimate provides a basis for revising the original figures as follows:

(a) If 50 per cent of arrests are effected, approximately 55 accused will be added, or approximately 19 new trials. This implies a reduction of 4 trials (from 23 to 19);

(b) If 75 per cent of arrests are effected, approximately 83 accused will be added, or approximately 28 new trials. This implies a reduction of 6 trials (from 34 to 28).

Paragraph 32 of the attachment addressed the number of mandates required to conclude trials of 136 new accused with the present resources. Using the revised figures, if 75 per cent of the new 111 accused were arrested (83 persons), then three new mandates after 2007 would still be required, although presumably trials would be expected to conclude during the course of the mandate. Should 50 per cent of the accused be arrested (55 persons), then two four-year mandates would be required after 2007 (2015).

Paragraph 37 of the attachment set out estimates upon the introduction of ad litem judges. Assuming that the reform is fully implemented by the beginning of 2003, the following estimates may be made:

(a) If 50 per cent of the suspects in the Prosecutor's revised estimate are arrested, the extra 19 trials could be completed by the end of the third mandate (2007) or early in the fourth mandate (2008);

(b) If 75 per cent of the suspects in the Prosecutor's revised estimate were arrested, the extra 28 new trials could be completed in the fourth mandate (2008-2009).

Consequently, the Prosecution's reduction of the number of new accused from 136 to 111 has a limited impact on the likely completion dates of the work of the Tribunal. The new figures will, however, assist the Tribunal in completing its mandate around 2007-2008.

It must be emphasized that, irrespective of the number of new accused who will actually be transferred to Arusha, it is indispensable for the Tribunal to obtain ad litem judges in order to speed up the trials against the number of accused who are already detained in Arusha, some of whom have been detained for several years. We have recently been informed by the Prosecutor that several of these cases will soon be ready for trial. As mentioned in the request, the trial chambers have very limited capacity to start new trials, with the ongoing 7 trials against 17 accused. The implementation of the ad litem reform is required as a matter of urgency so that trials may start as soon as the prosecution and the defence are ready to proceed, rather than having to wait months until one or all of the existing trial chambers have the capacity to start new cases.

Please find enclosed an updated version of the summary contained in the appendix to my letter dated 9 July 2001 (see appendix).

I respectfully request that these new facts be placed before the General Assembly and the Security Council for consideration.

(*Signed*) Judge Navanethem **Pillay**
President

Appendix

Revised summary of the request for ad litem judges

Since the first trial started in 1997, the trial chambers of the International Tribunal for Rwanda have rendered eight judgements in respect of nine accused. A total of 7 trials involving 17 accused are in progress. Consequently, 26 of the 54 persons brought before the Tribunal so far (of whom 46 are detained in Arusha and 6 are serving their sentence elsewhere) have either received judgement or are in trial. With the available resources, the trial chambers cannot complete their roll of present cases before 2006-2007, the end of the Tribunal's third mandate.

The Prosecutor has communicated her future investigation programme to the President of the Tribunal, and has subsequently revised her prosecution strategy. This makes it possible to project the possible completion of trials. The Prosecutor intends to arrest up to 111 new accused by 2004, but has stressed that there may not be sufficient evidence to support indictments "in a significant number of cases", and that not every indicted person will be arrested. Consequently, the actual number of new accused can be expected to be significantly lower than 111. Depending on the actual number of indictments and arrests, the Tribunal will be able to complete all trials in the first instance by 2015 (on a 50 per cent arrest rate) by 2018-2019 (75 per cent) or 2020 (100 per cent) with the present resources. Such time frames are not acceptable.

The present draft amendments to the Tribunal Statute in respect of ad litem judges largely follow the solution adopted in Security Council resolution 1329 (2000) for the International Tribunal for the Former Yugoslavia. However, it is proposed that the ad litem judges also be empowered to adjudicate in pre-trial proceedings and that a trial chamber section be composed of ad litem judges only. This is important to avoid delays.

The reform, if implemented in full by the end of 2002, will enable the Tribunal to complete all cases against the present detainees by approximately the end of 2004. The completion of the trials against the projected 111 accused, depending on the arrest rate, will be: 2007-2008 (50 per cent), 2008-2009 (75 per cent) and 2011 (100 per cent).

The creation of a pool of ad litem judges is a more cost-effective solution than continuing with only three trial chambers beyond the decade. In order to save costs, the judges envisage that the chambers will work in shifts.